

Town of Amherst  
Zoning Board of Appeals - Special Permit

*DECISION*

**Applicant:** Luis Medina

**Date Application filed with the Town Clerk:** June 28, 2005

**Nature of request:** Petitioner seeks a Special Permit, under Section 3.352.1 of the Zoning Bylaw to operate a Class II restaurant with take-out service, service of beer and wine and seasonal outdoor dining, open after 11:30 p.m.

**Location of property:** 28 Amity Street, The Amherst Cinema Building, (Map 14A, Parcel 254, B-G Zone)

**Legal notice:** Published in the Daily Hampshire Gazette on July 13 & 20, 2005, and sent to abutters on July 12, 2005.

**Board members:** Tom Simpson, Ted Rising and Susan Pynchon

**Submissions:**

The applicants submitted the following documents:

- A Management Plan for "Picante Mexican Restaurant" (the name was later changed to "Margarita's")
- A plan entitled "Amherst Cinema Building and Site Plan", dated June 17, 2005, prepared by Kuhn Riddle Architects.
- A floor plan for the restaurant, dated 6/17/05, prepared by Kuhn Riddle Architects. The plan was revised, dated 7/15/05, by Kuhn Riddle Architects to show no railing on the terrace.
- A copy of a Power Point slide presentation given at the public hearing, containing details about the proposed restaurant and its management.

The Planning Department submitted a memorandum dated July 19, 2005, which discussed zoning, previous permits, dimensional requirements, parking, plantings, lighting, signs, seasonal outdoor dining, the management plan of the building and restaurant, and Planning Board Review.

The Fire Department submitted a memorandum dated July 27, 2005, commenting on access, water supply, building code and address issues.

**Site Visit:** July 26, 2005

At the site visit the Board was met by Luis and Margarita Medina, the applicants, and Barry Roberts, the owner of the building. The Board observed the following:

- The location of the building in the downtown area, surrounded by banks, stores, restaurants and other businesses and the town library.
- The exterior of the Amherst Cinema building, currently under renovation.
- The driveway along the east side of the building, which will remain as an access to the parking lots located to the east of the building.
- The point along the building where the new restaurant will be located, including the location of the proposed doors, the proposed terrace for outdoor dining and the proposed walkway that will run along the east side from Amity Street to the rear of the building.

**Public Hearing:** July 27, 2005.

Luis Medina presented the petition at the public hearing. He made the following statements:

- The restaurant will be a fast service Mexican food restaurant.
- Beer and wine will be served in the sit-down area.
- Food preparation will be on the premises.

The petitioner presented a floor plan for the restaurant and terraced outdoor seating area. He stated that the railing along the inside edge of the terrace, originally shown on the drawing that he had submitted with his application, has been eliminated. This was done to be in conformance with the approved drawings for the Amherst Cinema building, which did not show the railing. The terrace will be separated from the main part of the restaurant by a semi-public walkway. This separation will affect the way he will manage the terrace dining.

Mr. Medina presented images of the chairs and tables with which he proposes to furnish the restaurant and the terrace. The indoor furniture will be made of leather and wood. The outdoor furniture will be metal, with tables fixed to the floor. The area of the restaurant is approximately 1,800 square feet. The area of the terrace is approximately 600 square feet.

The hours of operation will be:

11:00 a.m. to 11:00 p.m.	Sunday through Thursday
11:00 a.m. to 1:30 p.m.	Friday and Saturday

The kitchen hours will be 8:00 a.m. to 11:00 p.m. Monday through Sunday.

No alcohol will be served later than 1 a.m. Patrons will leave by 1:30 a.m. Deliveries to the restaurant will be made during the same hours as the other downtown restaurants, prior to 11:00 a.m.

Mr. Medina proposed the following:

- The fumes from the cooking will be vented from the roof.
- Beer, on tap, and wine will be served with food, and in glasses only.
- Hot food will be available until closing.
- The staff will participate in the new Save Serve Alcohol program offered by the Mass. Restaurant Association; the program trains restaurant staff in the service of alcohol.
- The terrace will be shared with other tenants of the building.
- The restaurant will be named Margarita's, not Picante.
- The petitioner will maintain the terrace area, including controlling patrons' behavior and trash pick-up.
- Alcohol will be served and consumed inside the restaurant only. There will be no drinking on the terrace.
- The signs will comply with the sign plan for the building as a whole.
- There will be a small sign for the business as part of the directory sign for the building located on the east side of the building near Amity Street.

Ted Rising inquired about parking for carry-out service. Mr. Medina said that many people will walk to the restaurant and that others will use the parking spaces available in the downtown area. He stated that there will be no delivery service from his restaurant during the first year of operation.

Tom Simpson asked if there would be a second story above the restaurant. Barry Roberts, owner of the building, stated that the ceiling of the restaurant will be 10 feet high and that there will be another story above the restaurant. The hood fan for the kitchen will be connected to a shaft that will run through the second story up to the roof.

Tom Simpson noted that the kitchen hours would be 8 a.m. to 11 p.m. Monday through Sunday, which is different from the hours stated in the Management Plan.

Mark Snow, Assistant Building Commissioner, asked about the width of the egress aisle and about the lighting. Mr. Medina responded that there would be track lighting inside the restaurant. Mr. Roberts commented that the signs and exterior lighting for the whole building were being taken care of under the Amherst Cinema permit process.

Mr. Snow asked about the types of food that would be available after the kitchen is closed but while alcohol is still being served. Mr. Medina stated that the menu will be available to the customers all the time that the restaurant is open.

Mr. Snow asked about the space between the seats inside the restaurant. He stated that he would check on the requirements for spacing of seating and that Mr. Medina could address that issue during the Building Permit process.

Barry Roberts stated that the outside signs and lighting would need to be approved by the Design Review Board. He also noted that Mr. Medina's restaurant will be located next to the alleyway that will run through the Amherst Cinema property and connect with the parking lot owned by Bank of America on the west side of the cinema building. Mr. Roberts has an agreement with the bank to use that parking lot during evening hours.

Peter Grandonico of Lincoln Real Estate, 25 North Pleasant Street, a member of the Town Commercial Relations Committee, stated that he supports the idea of Mr. Medina's restaurant. He thinks that it would be good for the downtown.

Ted Rising moved to close the evidentiary portion of the public hearing. Susan Pyncheon seconded the motion. The Board voted unanimously to close the evidentiary portion of the public hearing.

Tom Simpson moved to continue the deliberative portion of the public meeting to Wednesday, August 10, 2005, at 8:00 p.m. Ted Rising seconded the motion. The Board voted unanimously to continue the public meeting to August 10, 2005.

**Public Meeting**      August 10, 2005

At the public meeting the Board discussed the application. Mr. Rising commented on the railing that had been eliminated from the plan and stated that it might be a good idea to have a railing along the edge of the outdoor dining area.

Mr. Simpson noted that the permit for the Cinema building did not include a railing for the outdoor dining area. Mr. Medina had eliminated the railing to comply with the Special Permit for the Amherst Cinema building.

Mr. Simpson reiterated that there would be no alcohol served on the terrace and that the employees would be trained in appropriate alcohol serving methods. He asked for confirmation that the kitchen would be open seven days a week. The applicant confirmed that it would be open when the restaurant was open.

The applicant also re-confirmed that:

- There will be no live entertainment.
- The outdoor furniture for the terrace area will be furnished by Margarita's, but others will be allowed to use it.
- The terrace area will be maintained by the applicant.

Mr. Snow stated that there were fire code regulations for furniture, but he was not sure if they applied to an outdoor area. He stated that there were issues to be resolved about ventilation and about the distance between the seats, but these could be resolved during the Building Permit process.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required for all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since the building will become a mix of uses (restaurants, shops, offices and theaters) compatible with similar uses in the B-G zoning district.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since the building will be restored with upgraded drainage for the surrounding buildings as well. Lighting will be downcast. The conditions of the Special Permit will control the broadcast of music and noise, and live entertainment is not permitted in the restaurant or on the terrace.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since abutters will have continued access to the back of their buildings, emergency vehicles can reach all sections of the building as well as surrounding buildings, and pedestrians will have two covered walkways for accessing the restaurants, shops and/or theaters.

10.384 – Adequate and appropriate facilities would be provided for proper operation in that the space is large enough to accommodate the needs of the restaurant, including seating, kitchen space and bathrooms. The fumes from the kitchen will be vented to the roof.

10.386 – The proposal ensures that it is in conformance with Parking and Sign regulations since the restaurant will be located in the municipal parking district and does not need extra parking. Signs will be submitted for approval at a business meeting of the Board.

10.388 – The proposal ensures adequate space for off-street loading and unloading of goods and products in that off-street loading/unloading will take place on the east side of the building, where there is adequate access. The bank parking lot on the west side of the building will be available as well.

10.389 – The proposal provides adequate methods of disposal in that the property is serviced by Town water and sewer lines. The building owner will provide receptacles for refuse and recyclables for each restaurant, shop and the theaters, and will have a dumpster at the back of the property. The petitioner's Management Plan states that the inside and outside trash receptacles associated with the restaurant will be emptied at least three times a day.

10.391 – The proposal protects, to the extent feasible, unique and important historic features in that the original 100+ year old building will be respectfully restored, not demolished. The design of the restaurant will respect the historic features of the building as well.

10.392 – The proposal provides adequate landscaping and screening to the extent that it can. The site currently is non-conforming as to coverage, with almost 100% coverage. The proposal does not change this fact, but the building owner said that he would provide plantings in as many areas as possible – window boxes, indoor plants, etc.

10.396 – The proposal provides screening for storage areas, dumpsters, and

similar features since the dumpsters will be screened, the rooftop equipment will be screened, and other storage will be done within the building or basement area.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that the restoration of the building and the addition of this new restaurant will promote the economic viability of the downtown. It will enhance the creative offerings in Amherst and promote the general welfare of the inhabitants of Amherst.

### **Zoning Board Decision**

Ted Rising MOVED to approve the application with conditions. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to Luis Medina to operate a Class II restaurant with take-out service, service of beer and wine and seasonal outdoor dining, on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone), subject to conditions.

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TOM SIMPSON

\_\_\_\_\_  
TED RISING

\_\_\_\_\_  
SUSAN PYNCHON

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Luis Medina to operate a Class II restaurant under Section 3.352.1 of the Zoning Bylaw, with take-out service, service of beer and wine, and seasonal outdoor dining on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone) with the following conditions:

1. A revised Management Plan shall be submitted for review and approval by the Board at a public meeting on October 20, 2005, including the following:
  - The final name of the new restaurant
  - The hours of operation as discussed with the Board at the public hearing
  - The word "Vendor" inserted before the word "deliveries" on the Summary page
  - The hours for Take-out Service and the fact that Delivery Express may be involved with the Take-out Service.
2. A final revised floor plan showing a revised seating plan, if required by the Building Commissioner, shall be submitted for review and approval by the Board at a public meeting on October 20, 2005. If a revision is not required, the petitioner shall build according to the floor plan prepared by Kuhn Riddle Architects, dated 7/15/05 and approved by the Board on July 27, 2005.
3. Proposed signs and outdoor dining chairs/tables/canopies shall be submitted to the Design Review Board for review prior to being presented to the ZBA for review and approval at a public meeting on October 20, 2005, including colors, sizes, materials and graphics.
4. Hours of operation for dining, take-out and delivery shall be as follows:

11:00 a.m. to 11:00 p.m.	Sunday through Thursday
11:00 a.m. to 1:30 p.m.	Friday and Saturday
5. Food shall be served until closing.
6. There shall be a maximum of 8 employees on the premises at one time.
7. All staff people who are involved with the service of alcohol shall have first received Serve Safe Alcohol training.

8. No alcohol shall be served in the outdoor dining area or taken to the outside area.
9. The petitioner shall be responsible for maintaining the outdoor dining area, keeping it clean and free of litter and debris.
10. Outdoor furniture shall be removed from the outdoor dining area and stored between November 1 and April 1.
11. There shall be no live entertainment on the premises of the restaurant. Recorded music may be broadcast inside the restaurant. There shall be no music broadcast outside the restaurant. The volume of sound generated by music from the restaurant shall not exceed average background sound levels outside the restaurant.
12. There shall be no disposable utensils, plates or cups used in the outdoor dining area.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE